



MEMORANDUM

DATE: March 3, 2004

A handwritten signature in cursive script, appearing to read "Mike Letcher".

TO: The Honorable Members of the Mayor
and Council Good Government Subcommittee

FROM: Michael Letcher
Deputy City Manager

SUBJECT: City Magistrate Appointment Process

Attached is a draft of a Mayor and Council Memorandum on the City Magistrate Appointment Process for review and discussion at the March 4, 2004 Good Government Subcommittee meeting. The Memorandum contains the seven recommendations that resulted from the Subcommittee's discussion of this topic at the meetings held on October 2nd, November 20th, and December 4th, 2003 and February 5, 2004.

Staff recommends that the Subcommittee provide follow-up direction to staff in terms of forwarding this Memorandum as an agenda item to the Mayor and Council.

Attachment 1: Draft of Mayor and Council Memorandum

ML:MN:csv

c: James Keene, City Manager
Liz R. Miller, Assistant City Manager
Frank Kern, Principal Assistant City Attorney
Antonio Riojas, Associate Presiding City Magistrate
Marie Nemerguth, Special Projects Coordinator



Mayor & Council Memorandum

Subject: City Magistrate Appointment Process (Citywide)

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Issue – The Good Government Subcommittee reviewed various aspects of the City Magistrates Merit Selection Commission and the related city magistrate appointment processes at its October 2, 2003, November 20, 2003, December 4, 2003, and February 5, 2004 meetings. City staff present at those meetings included representatives from the City Manager's Office, City Attorney's Office, Tucson Police Department, and the Presiding Magistrate of City Court. Several members of the Magistrates Merit Selection Commission were present for some of the discussion as well as the Presiding Judge of the Pima County Superior Court.

City Manager's Recommendation – The Good Government Subcommittee review and discussion of the city magistrate appointment process resulted in forwarding seven recommendations to the full Mayor and Council for consideration (see "Project Description and Analysis" heading below). Some items would require ordinance changes to revise the City Code. Following today's discussion, the City Manager recommends that the Mayor and Council advise staff as to the specific action to be taken on any of these seven items described below.

Background – The City Magistrates Merit Selection Commission was created by Tucson City Code to make recommendations to the Mayor and Council for city magistrate appointments. The Commission consists of nine members serving one-year terms. Attached are flowcharts of the current City Magistrate Selection Process for Vacancies (Attachment A) and Reappointments (Attachment B).

Project Description and Analysis – The Good Government Subcommittee recommends the following topics for discussion by Mayor and Council in order to provide clarification, modification, and improvement to the current city magistrate process:

- 1) **Vacant Magistrate Positions** – Following are two recommended Code changes related to the process for filling vacant positions:
 - a) Change from 60 to 90 days the timeframe within which the Merit Selection Commission shall recommend candidates to Mayor and Council. This will provide more flexibility and time to city staff to schedule Commission meetings and interviews with applicants.
 - b) Specify that the Merit Selection Commission shall recommend to the Mayor and Council a minimum of one but not more than three persons in ranked order. The Commission's ranking will provide additional input for the Mayor and Council as it relates to the candidates recommended by the Commission.

- 2) **Code Language Clarification** – Clarify the inconsistent job title language in the City Code so that the Judge of the Pima County Superior Court is referenced as “Presiding Judge” and the City Court presiding city magistrate position is referenced as “Presiding Magistrate”.
- 3) **Accountability and Performance of City Magistrates** – Prescribe the collection of specific information for consideration by the Magistrates Merit Selection Commission during an appointment process to solidify the accountability and performance of the city magistrates. This information should include the following records that should also be made available to the Mayor and Council and the City Manager’s Office.
 - a) The three-member Judicial Conference Team conducts a Judicial Performance Review (JPR) of each magistrate every two years. This process provides documented information that addresses a magistrate’s overall judicial performance as evaluated by a survey process, self-evaluation, and interview.
 - b) The Presiding Magistrate should document individual magistrate’s judicial performance in terms of courtroom administration statistics (e.g. case aging, case dispositions).
 - c) The Presiding Magistrate should perform written annual reviews to address each magistrate’s performance as a city employee, in addition to their judicial performance. This review would be based upon the policies and employment principles prescribed in the city Code of Ethics and Rules of Conduct (Administrative Directives 2.02-5 and 2.02-14 - see Attachments C and D).
- 4) **Application Process for City Magistrates** – Include instructions with the application packet to ensure that there is no communication with the Mayor and Council until an individual has been recommended by the Magistrates Merit Selection Commission. This would funnel more information through the Commission and avoid premature contact with the Mayor and Council. Attachment E is a draft of these instructions.
- 5) **Reappointment Process** – During the Good Government Subcommittee discussion of the magistrate process, two Subcommittee members requested further exploration of a major change to the current reappointment process based on a practice used with magistrates in other court settings (e.g. federal magistrates). This would require that a city magistrate with an expiring term who is interested in serving another term apply for the upcoming vacancy along with other applicants. The expiring position would become an open vacant seat with a prescribed competitive process to be followed for filling it (see Attachment A).

- 6) **Commission Member Qualifications** – Per the Tucson Code section on the Magistrates Merit Selection Commission, there are nine members who each serve one-year terms. This membership is composed of a) four attorney members appointed by the County Bar Association, not more than two of whom shall be of the same political party, and b) five non-attorney members, three selected by members of the Governing Body who represent the political party in the majority and two selected by members of the Governing Body who represent the minority political party.

The Good Government Subcommittee recommends that one of the five non-attorney members appointed by Mayor and Council be a member of law enforcement. There is no legal obstacle to appointing a law enforcement representative to the Commission.

- 7) **Commission Member Term** - The Good Government Subcommittee recommends that the membership term for all Commission members be increased from one to four years. Per the Tucson Code section on terms of Boards, Committees, and Commission, the membership term of Mayor and Council appointed members is to be four years unless it has been specified otherwise, which was the case for this particular Commission when the term was specified to be one year only.

Legal Considerations – Attached is a draft of an ordinance (Attachment F) prepared by the City Attorney's Office that includes the revisions that would need to be adopted by the Mayor and Council in order to implement the changes discussed above. This ordinance would revise specific language in the Tucson Code, Chapter 8, City Court.

Respectfully submitted,

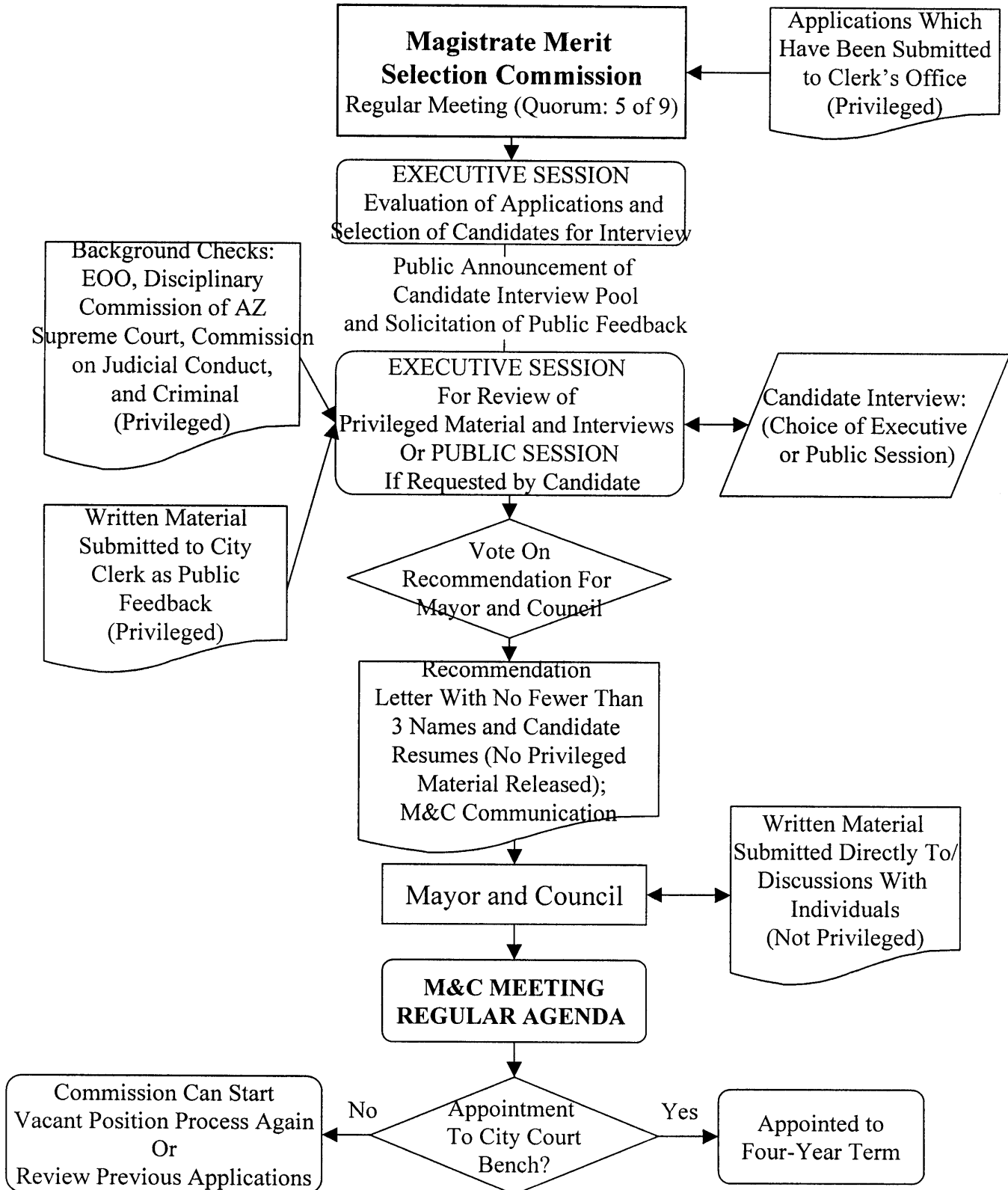
James Keene
City Manager

JK:ML:mn

Attachments: A. City Magistrates Selection Process Flowchart for Vacancy
B. City Magistrates Selection Process Flowchart for Reappointment
C. Administrative Directive 2.02-5 Code of Ethics
D. Administrative Directive 2.02-14 Rules of Conduct
E. Draft of Directions Included with a Magistrate Application
F. Draft of Ordinance Revising Tucson Code, Chapter 8, City Court

City Magistrate Selection Process For Vacant Position

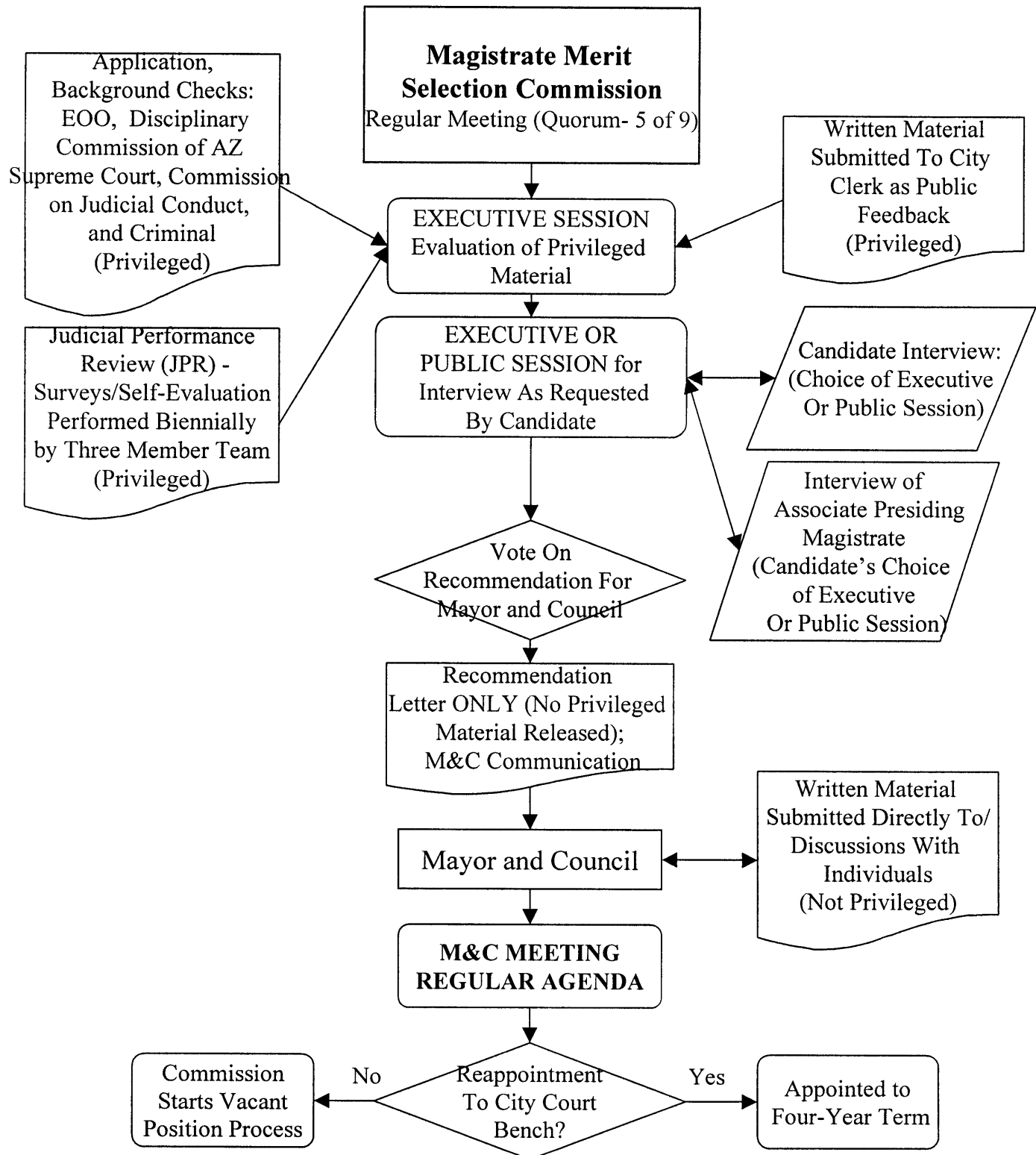
Magistrate Merit Selection Commission Must Make Recommendation to M&C Within 60 Days Of Vacancy; City Clerk's Office Advertises Vacancy Locally, Advises Bar Associations, and Schedules Commission Meeting to Meet Recommendation Requirement



City Magistrate Selection Process For Reappointment

Magistrate Must Apply for Reappointment
At Least Nine Months Prior to Term Expiration

Press Release Seeking Comments on Applicant



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1. Using public office or employment for private gain;
2. Giving preferential treatment to any organization or person;
3. Impairing independence or impartiality of action;
4. Impeding government efficiency or economy;
5. Adversely affecting the confidence of the public in the integrity of City government.

A. Bribe - Signifies anything of value or advantage, present or prospective, asked, offered, given, accepted or promised with a corrupt intent to influence, unlawfully, the person to whom it is given in his action, vote, or opinion, in any public or official capacity.

B. City Business - Any and all activities the City is legally responsible for, delegated or otherwise, that are authorized by the Arizona Constitution, the Tucson City Charter, or Mayor and Council Ordinance or Resolution.

C. **Conflict of Interest** - A situation in which a public officer, employee, or relative thereof has a private or personal interest sufficient to influence, or appear to influence, the objective exercise of the officer's or employee's official duties.

D. Employee - All employees of the City who are not officers.

E. Officer - All appointees of the Mayor and Council and the City Manager whose positions are set forth in Charter, Code, Ordinances, or Resolutions of the City.

F. **Outside Employment** - Services rendered to an employer other than the City of Tucson, including self-employment, for which an individual expects to receive a personal gain.

G. Person - Any individual or other legal entities such as partnerships, corporations, associations, unions, and brotherhoods.



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H. **Relative** - Refers to a husband or wife, brother or sister, parent, grandparent, child, or grandchild of any officer or employee, and to any parents-in-law, brothers-in-law, or sisters-in-law.

III. POLICY STATEMENT

The proper operation of City government requires that public officers and employees be independent, impartial and responsible to the people; that government decisions and policy be made and passed through proper channels of government; that public office or employment not be used for private gain; and that the public have confidence in the integrity of its government. In recognition of this goal, a Code of Ethics is hereby established for City officers and employees.

IV. RESPONSIBILITIES OF PUBLIC GOVERNMENT

Employees are agents of public purpose and hold their position for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of Arizona, and to impartially carry out the laws of the nation, State, and municipality and thus to foster respect for all government. They are bound to observe the highest standards in their official acts and to faithfully discharge the duties of their office.

In recognition of the special position which public officers and employees hold, and the potential for private interest to come into conflict with the general public good, the State, as well as this municipal government, have passed laws, rules, and regulations governing public officers' and employees' conduct.

V. CONFLICT OF INTEREST**A. General**

A conflict of interest is defined as a conflict between the private financial interests and the official responsibilities of a person in a position of trust (a City official or employee).

The most significant and encompassing of the preemptive state laws dealing with public officers' and employees' conduct are the Arizona Revised Statutes § 38-501 through § 38-511, appropriately titled "Conflict of Interest of Officers and Employees." The object of conflict of interest statutes is to remove or limit the possibility of personal influence which might bear upon an official's or employee's decision.

These statutes do not specifically define those interests which can become the basis of a conflict. Instead, they declare that any interest can give rise to a conflict if it is not one of



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the eleven interests that are defined as remote interests and thus incapable of creating conflict (see Section V.B, "Exempted Areas of Interest").

Unquestionably, the key to avoiding problems with the conflict of interest statutes lies in maintaining a sensitivity to the area. There can be no security or defense in acting without consideration of the potential for the creation of conflicts, for the laws also prohibit unintentional violations. The facts which relate to each circumstance are critical. The surest way an officer or employee can insulate himself from the creation of conflicts is to be continually alert to the possibility of a conflict, and to request a review of the situation by the City Attorney's Office whenever a potential conflict exists (see Section V.C.).

B. Exempted Areas of Interest

There can be no conflict of interest if the public officer, employee, or a relative thereof has an interest which is that of:

1. A NONSALARIED OFFICER OF A NON-PROFIT CORPORATION.

Example: An officer or employee may conduct City business with Big Brother, Inc., even though that officer, employee, or a relative thereof is a nonsalaried officer of that corporation.

(Note regarding ECAP activities: It is the City's policy that City employees and officers who are board members of non-profit agencies shall not participate as ECAP officers or ECAP departmental representatives.)

2. THE LANDLORD OR TENANT OF A PARTY CONTRACTING WITH THE PUBLIC AGENCY.

Example: An officer or employee may conduct City business with a person, even though the officer, employee, or a relative thereof, may be the landlord or tenant of that person.

(Note: This exemption does not apply to federally subsidized housing. Officers and employees should refer to Federal regulations regarding conflicts of interest in federally-funded housing programs.)

3. AN ATTORNEY OF A CONTRACTING PARTY.

Example: An officer or employee may conduct City business with a person, even though that person may be a legal client of the officer, employee, or a relative thereof. (But see applicable Arizona Rules of Professional Conduct and In re Ethics Opinion No. 74-28, 111 Ariz. 519, 533 P.2d 1154 (1975) as to the representation.)



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4. A MEMBER OF A NON-PROFIT COOPERATIVE MARKETING ASSOCIATION.

Example: An officer or employee may conduct City business with a non-profit cooperative marketing association, even though that officer, employee, or a relative thereof is a member of that association.

5. AN OWNER OF LESS THAN THREE PERCENT (3%) OF THE SHARES OF A PROFIT CORPORATION CONDUCTING BUSINESS WITH A PUBLIC AGENCY SO LONG AS:

- The annual income from the ownership of the stock does not exceed five percent (5%) of the individual's total annual income; and
- Other payments made to the individual by the corporation do not exceed five percent (5%) of his total annual income.

Example: An officer or employee may conduct City business with any profit-making corporation even though the officer, employee, or a relative thereof receives income from that corporation, so long as the income does not exceed the five percent (5%) limitations.

6. REIMBURSEMENT FOR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF OFFICIAL DUTIES.

Example: An officer or employee who is compensated by the City for actual out-of-pocket expenses properly incurred in the course of executing his duties does not have an interest subject to conflict of interest.

7. RECEIVING PUBLIC SERVICES GENERALLY PROVIDED BY THE PUBLIC AGENCY ON TERMS WHICH ARE THE SAME AS THOSE TERMS BY WHICH THE SERVICES ARE PROVIDED TO THE PUBLIC AT LARGE.

Example: An officer, employee, or a relative thereof may receive police and fire protection, transportation, or other public services, so long as those services are provided on the same terms as they are provided to the general public.

8. A MEMBER OF THE HEARING BOARD WHICH GOVERNS BANKS OR FINANCIAL INSTITUTIONS IN THE STATE.

Example: This interest is restricted to the members of the State Banking Hearing Board which regulates banks and financial institutions within the State.

9. A PUBLIC SCHOOL BOARD MEMBER WHO HAS A RELATIVE EMPLOYED BY THE SCHOOL SYSTEM SO LONG AS THAT RELATIVE IS NOT A DEPENDENT OR SPOUSE.

Example: An individual may be a school board member and participate on all matters



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coming before the board even though a relative is employed by the school system, so long as the relative is not a dependent as defined in A.R.S. § 43-127. This remote interest is limited specifically to public school board members.

10. A PUBLIC OFFICER, EMPLOYEE, OR RELATIVE THEREOF WHO IS ALSO AN OFFICER OR EMPLOYEE OF ANOTHER POLITICAL SUBDIVISION OR PUBLIC AGENCY SO LONG AS THE MATTERS BEING CONSIDERED WOULD NOT CONFER A DIRECT ECONOMIC BENEFIT OR DETRIMENT UPON THE INDIVIDUAL.

Example: An officer or employee may participate in matters relating to planning, transportation, parks, etc., which would affect the University of Arizona, even though the officer, employee, or relative thereof is employed by the University, so long as the matter does not involve a direct economic benefit or detriment to the officer, employee, or relative.

11. A MEMBER OF A TRADE, BUSINESS, OCCUPATION, PROFESSION, OR CLASS OF PERSONS WHOSE INTEREST IS NOT GREATER THAN OTHER MEMBERS OF THAT TRADE, BUSINESS, OCCUPATION, PROFESSION, OR CLASS.

Example: An officer or employee may participate in matters concerning amendments to the plumbing code, even though that officer, employee, or relative thereof is a plumber.

C. What To Do When A Potential Conflict of Interest Exists

Any interest possessed by an officer, employee, or a relative thereof which is not exempted (listed in B above) can create a conflict of interest. The simple possession of such a non-exempt interest does not violate the statutes or create a conflict of interest. Instead, a conflict of interest is created when an officer or employee may participate in a transaction with the City regarding that interest. The employee must then declare the interest and state that he or she will not participate as a City employee in any activity, transaction or decision making regarding that interest.

In order to comply with the law, the employee must formally declare the existence of the interest (see "Filing of Disclosure Statement" below) and agree to refrain from acting upon that interest in any capacity or manner as an officer or employee.

1. Filing of Disclosure Statement:

In order for an officer or employee to declare an interest, the filing of a disclosure statement is necessary. The preferred form is Attachment 1 (Attachment 2 or 3, as applicable, where Federal funds are involved). The disclosure form must be



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completed and signed by the officer or employee and must fully disclose the facts constituting the interest and the transaction in which the employee has the conflict. The original signed disclosure statement must be filed with the City Clerk's Office, which will route a copy to the City Attorney's Office and the employee's department director.

2. Review of Potential Conflicts by City Attorney:

When an employee is uncertain whether a conflict of interest exists, the employee may seek private legal advice. The employee may also request a review of the facts and circumstances by the City Attorney, in which case the employee must fill out the disclosure statement including the request for review and file it with the City Attorney's Office. If it is determined that a conflict of interest exists or will exist, the City Attorney, representing the City, shall request the employee to file the disclosure statement with the City Clerk and to refrain from acting upon the interest as a City official or employee.

VI. CONFIDENTIAL INFORMATION

The State conflict statutes also forbid the use by officers and employees of confidential information acquired in the course of their term of office or employment for any personal gain.

VII. GIFTS AND ENTERTAINMENT

An officer or employee may not be compensated for representation of a party in a matter upon which he has exercised the discretion of his office or employment for a period of one year after the end of his term of office or employment. It is also improper for an officer or employee to be compensated or receive something of value for the performance of his duties or employment responsibilities, unless such an item would be normally and regularly received.

Example: An officer or employee may accept a meal which is the result of a regular meeting of a board or commission; however, an officer or employee cannot accept dinner at his favorite restaurant for having participated in a particular manner on a question or for expediting a project.

VIII. BRIBERY AND CORRUPTION

In addition to "conflict law" prohibitions, Arizona Revised Statutes § 13-2601-2605 provides that a public officer or person elected or appointed to a public office who asks, demands, expects, receives, or agrees to receive a bribe upon an agreement or understanding that his vote, opinion, or action upon any matter then pending or which may be brought before him in



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his official capacity shall be influenced thereby, shall be punished by imprisonment in the State prison for not less than one nor more than fourteen years, and, in addition thereto, forfeits his office and is forever disqualified from holding any office in this State. An employee of the City is similarly prohibited from demanding, expecting, receiving, or agreeing to receive a bribe for the performance of his job or the execution of any employment responsibility.

IX. OUTSIDE EMPLOYMENT

An officer or employee shall not engage in or accept private employment or render services for private interests unless such activity is initiated and maintained in compliance with City Administrative Directive 2.02-6. Approval of such activity will not be given where in the judgment of the City Manager the outside employment would be incompatible with the proper discharge of employment duties or would tend to impair or appear to impair independent judgment or action in the performance of employment duties.

X. PURCHASES FROM THE CITY

An officer or employee is free to buy surplus City property which is offered for sale through a public auction unless:

- A. The officer or employee has, because of his official position, been able to obtain special knowledge about the condition of the goods to be sold, or
- B. The officer or employee has been officially associated with the disposal arrangements.

XI. SALES TO THE CITY

An officer or employee may not sell or supply any equipment, materials, goods, or services to the City unless it is pursuant to an award or contract which has been let after public, competitive bidding.

XII. USE OF CITY EQUIPMENT AND FACILITIES

Employees are prohibited from using City vehicles, equipment, materials, property, or City processes for general convenience or profit, unless it is made available or provided to the general public. As an example, employees are prohibited from sending Christmas or other personal cards through the City mail system.



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CODE OF ETHICS**XIII. ELECTIONEERING AND CAMPAIGN WORK**

- A. No classified officer or employee** (i.e., whose conditions of employment are governed by the Civil Service Commission) may electioneer or take any other part in any campaign for any candidate for **City** office.

However, officers and employees are allowed to take part in campaigns of candidates for any **non-City** elective office, provided the campaign activity does not take place during the employee's working hours, and does not involve any City property or other City resource.

- B.** Any activity by non-classified officers and employees to promote the candidacy or campaign of a candidate for City office must be conducted during the employee's non-working hours, and must not use any City property or other City resource.
- C.** No classified officer or employee may be a member or officer of any national, State, or local committee of a political party or partisan political club or organization, or be a candidate for nomination or election to any partisan elective public office.
- D.** Any official communication by City classified officers or employees regarding City bond elections or City budget override elections must be authorized by the employee's department head or director.
- E.** No person shall seek or attempt to use any political endorsement to obtain any promotion in the classified service.
- F.** No employee or non-elected officer may attempt to influence the vote in exchange for a promise or an attempt to secure an increase in pay or other advantage in City employment.
- G.** All employees and officers are allowed to express their political opinions as private citizens and are encouraged to exercise their right to vote.

XIV. CAMPAIGN CONTRIBUTIONS

- A.** No City officer or employee may solicit or receive funds at any time from classified employees for any campaign for any public office.
- B.** No officer or employee may solicit or contribute funds for the campaign of any candidate for **City** office. However, they may contribute to election campaigns other than for City offices, or in elections involving non-partisan matters. They may also contribute to the City's election campaign account for public financing of candidates for City offices.
- C.** No person may solicit any campaign funds from classified employees during those employees' working hours. Thus, persons who are not City employees can solicit funds for non-City or non-partisan campaigns from classified employees outside of the employees' working hours.

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XV. CODE OF ETHICS AWARENESS

The Director of Human Resources, through the employee orientation program, is responsible for informing newly appointed employees of the ethical standards they are expected to observe.

Department heads shall be responsible for employee awareness and for the administration of this directive in their respective departments.

XVI. ADMINISTRATION AND ENFORCEMENT

Department and office heads shall be responsible for administration and enforcement of the provisions of this directive.

Violation of any provision of this Code of Ethics shall be cause for disciplinary action. Disciplinary action may range from an oral or written reprimand to dismissal depending upon the degree of the violation.

XVII. APPENDIX

- Attachment 1 - Conflict of Interest Disclosure Statement/Request for Review
- Attachment 2 - Interest Disclosure Statement for Federal Financial Assistance Projects and Programs (Other than Section 8 Housing Assistance Payments Program)
- Attachment 3 - Interest Disclosure Statement for Section 8 Housing Assistance Payments Program

XVIII. RESPONSIBILITY FOR REVIEW

It shall be the responsibility of an Assistant City Manager to maintain a continuous review of the Code of Ethics to assure its pertinence and effectiveness.

AUTHORIZED:

THOMAS J. WILSON
CITY MANAGER



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RULES OF CONDUCT**I. PURPOSE**

To establish rules of conduct for all City employees. These general rules may be further defined in writing and distributed by individual departments as deem necessary.

II. POLICY

All employees must observe the following basic principles and rules of conduct throughout their employment with the City:

1. Be at work on scheduled working days at the designated starting time, and remain at assigned work place during designated work hours unless permission to leave has been granted by the supervisor.
2. Observe department breaks and lunch periods without abuse.
3. Use and maintain, in a reasonable manner, tools, machines, cars, and other City property and equipment to assure their usefulness and longevity. Report malfunctions or hazardous conditions of tools, machines, cars, and other City property and equipment to assure proper maintenance and safety.
4. Complete the required "time worked" records in accordance with instructions issued by the City.
5. Personally notify the supervisor as quickly as possible if absence is necessary, and otherwise comply with all provisions of A.D. 2.01-7, "Employee Leaves".
6. Obtain Department Director's permission before soliciting funds, selling tickets, passing petitions, or distributing literature on City property or during business hours.
7. Follow established safety practices and immediately report accidents to the supervisor or his/her designee.
8. Cooperate in keeping the work place, equipment, and vehicles in clean and sanitary conditions.
9. Carry out specific orders or instructions from assigned supervisory personnel.
10. Perform a full day's work in an efficient manner in accordance with the methods and standards required by the City. Be mindful that while on duty, an employee is a representative of the City, and should interact with the public and co-workers in an appropriate manner.
11. Truthfully give all pertinent facts and information to supervisors on any matters involving or concerning City employment.
12. Truthfully give all pertinent facts on records prepared.
13. Promote harmony and cooperation among fellow workers.



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14. Keep their supervisors informed of all matters relating to and affecting their employment.
15. Not report for duty or work under the influence of alcohol. On or off duty possession, use, or sale of controlled substances without a prescription is prohibited (see Administrative Directive 2.02-11, "Drug and Alcohol Use; Impaired Employees; Physical Evaluations; Applicant Testing).
16. Advise supervisory personnel of use of prescription drugs if such use may affect performance of assigned duties.
17. Report to the supervisor any damage, thievery, or unauthorized removal of property belonging to the City or to another employee.
18. Adhere to those provisions of the City Charter, City Ordinances, City Administrative Directives, Department rules and regulations, and Civil Service Commission Rules that relate to their employment with the City.
19. Supervisory personnel are responsible for the proper conduct of their assigned employees and the functional work activities under their control, and should be familiar with the Guidelines for the Administration of Discipline published by the Department of Human Resources.
20. Abide by all local, state, or federal laws.
21. Not possess firearms or other weapons while at work, or on City premises, or on City business unless specifically authorized to do so by the Department Director and the Chief of Police.
22. Employees are prohibited from using City vehicles, equipment, materials, property, or City processes for general convenience or profit, unless it is made available or provided to the general public. As an example, employees are prohibited from sending Christmas or other personal cards through the City mail system.

III. CITY OWNERSHIP OF EMPLOYEE WORK PRODUCTS

- A. The City maintains ownership rights for all employee suggestions and work products conceived or produced by an employee, alone or with others, on City time, even if the work does not pertain to the employee's assigned duties. Examples of work products include ideas, inventions, solutions, drawings, writings, audio and videotapes, computer programs tools, equipment, and any other product, devices, or developments designed or modified, in whole or in part, on City time. Further, the City maintains ownership rights for all suggestions and work products that are the result of any materials, property, information, equipment, or other resources or opportunities supplied by the City that enable the employee to develop or perfect the suggestion or work product.



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- B. Work products created on City time by Seasonal Fee Class Instructors, for demonstration purposes in Leisure Education Fee Classes, may be retained by Instructors if the materials necessary to produce the demonstration products are provided by the Instructors at their own expense. If materials for demonstration products created by Seasonal Fee Class Instructors are provided by the City, the City will maintain ownership rights to the work products.

C. **RESPONSIBILITY FOR REVIEW**

The Director of Human Resources shall annually review this directive in February or as needed.

AUTHORIZED:

MICHAEL BROWN
CITY MANAGER

Exhibit "A" to Ordinance No. _____

INSTRUCTIONS FOR LETTERS OF REFERENCE AND TELEPHONE CALLS.

These instructions are applicable to all individuals seeking appointment as a city magistrate.

LETTERS AND TELEPHONE CALLS TO THE MAGISTRATE MERIT SELECTION COMMISSION.

The City's Magistrate Merit Selection Commission ("commission") welcomes and needs the written comments and assessments of others regarding an applicant's skills, expertise, ethics and other characteristics relevant to an individual's qualifications for seeking appointment as a city magistrate. Although applicants solicit letters of reference in support of their application, applicants are advised that "more" is not necessarily "better". Ten to twelve substantive letters of reference are usually adequate to give the commission a perspective about what the authors of those letters believe about the applicant. All letters of reference should be sent to the City Clerk's Office, attention Magistrate Merit Selection Commission, City Hall Tower, 255 West Alameda, P.O. Box 27210, Tucson, Arizona 85726-7210. All letters timely received will be distributed to all members of the commission. Letters should not be sent to individual commission members. Letters sent to the commission will be treated as confidential.

The commission also welcomes telephone calls to individual commissioners where the caller can provide candid insight into the qualifications of the applicant. However neither the commission nor its individual members

either need or desire “phone banks” on behalf of applicants. Again, applicants are reminded that “more” is not necessarily “better”.

LETTERS AND TELEPHONE CALLS TO THE MAYOR AND COUNCIL.

Applicants shall not contact, or request others to contact, members of the Mayor and Council or their staff regarding their application for appointment as a city magistrate. Nor should applicants seek or solicit letters of recommendation or telephone calls to members of the Mayor and Council or their staff. All letters of reference and telephone calls regarding an application for appointment as a city magistrate should be directed to the commission.

After the commission forwards its recommendation to the Mayor and Council, individual(s) whose names are recommended for appointment may solicit letters of reference and telephone calls directed to members of the Mayor and Council. Again these applicants are advised that “more” is not necessarily “better”. Ten to twelve substantive letters of reference are usually adequate to give a perspective about what the authors believe about the applicant. These final applicants may also solicit individuals to make telephone calls to members of the Mayor and Council on their behalf. However neither the Mayor and Council or its individual members either need or desire “phone banks” on behalf of any of the final applicants.

Those applicants recommended for appointment may also personally contact council members if the individual council member so desires.

CANONS OF JUDICIAL ETHICS.

Applicants seeking their first appointment as a city magistrate and those seeking a second or subsequent appointment are reminded that both sitting magistrates and those seeking a first time judicial appointment are governed by Canon 5 of the Code of judicial Ethics. All applicants should read and comply with the provisions of Canon 5.

Lawyer applicants are further reminded they are also governed by the provisions of ER 8.2 (b) of the Rules of Professional Responsibility. Applicants should review and comply with the provisions of that section.

The commentary to Canon 2A of the Code of Judicial Conduct provides: "A judge must avoid all impropriety and appearance of impropriety." The commentary further states: "The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Sitting magistrates are referred to Judicial Ethics Advisory Opinion 99-1 regarding soliciting support from attorneys.

The Rules of Professional Responsibility impose a like requirement for lawyers. Accordingly all applicants for city magistrate shall refrain from any conduct which even involves the appearance of an impropriety.

DRAFT 2/5/04

Underline indicates additions

Strikethrough indicates deletions

ADOPTED BY THE
MAYOR AND COUNCIL

PROPOSED ORDINANCE NO. _____

RELATING TO CITY COURT; AMENDING THE TUCSON CODE, CHAPTER 8
ARTICLE 1, SECTION 8-2.1 METHODS OF APPOINTMENT OF
MAGISTRATES AND QUALIFICATIONS ESTABLISHING SENIOR SPECIAL
MAGISTRATE STATUS AND COMPENSATION; SECTION 8-4 MAGISTRATES;
POWERS AND DUTIES; SECTION 8-4.1 AUTHORIZING ASSIGNMENT OF AN
ASSOCIATE PRESIDING MAGISTRATE, TERM, COMPENSATION; AND
DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF
TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. The Tucson Code Chapter VIII, Article 1, Section 8-2.1 *Methods of
appointment of magistrates and qualifications; establishing senior special magistrate
status and compensation*, subsection (a) is hereby amended to read as follows:

**Sec. 8-2.1. Methods of appointment of magistrates and qualifications;
establishing senior special magistrate status and compensation.**

- (a) There shall be a nonpartisan merit selection commission known as the
magistrate merit selection commission on magistrate appointments composed of
four (4) attorney members appointed by the county bar association , not more
than two (2) of whom shall be of the same political party, and five (5) non-
attorney members, three (3) of whom shall be selected by members of the
governing body who represent the political party in the majority, and two (2) of
whom shall be selected by members of the governing body who represent the
political party in the minority. Of the five non-attorney members not more than

three shall be of the same political party and at least one shall be a member of law enforcement. None of the attorney or non-attorney members of the commission shall hold any other elective or appointive public office, and no attorney member shall be eligible for appointment to the office of magistrate until one (1) year after ceasing to be a member of the commission. All members shall serve ~~one~~ four year terms.

* * *

SECTION 2. The Tucson Code Chapter VIII, Article 1, Section 8-2.1 *Methods of appointment of magistrates and qualifications; establishing senior special magistrate status and compensation*, subsection (c) is hereby amended to read as follows:

Sec. 8-2.1. Methods of appointment of magistrates and qualifications; establishing senior special magistrate status and compensation.

* * *

(c) Within ~~sixty (60)~~ ninety (90) days from the occurrence of a vacancy in the office of magistrate or within one hundred eighty (180) days prior to the expiration of a magistrate's term, or at the request of mayor and council, the commission shall recommend to the mayor and council the names of ~~not less than three persons a~~ minimum of one but not more than three persons in ranked order to fill such vacancy the position of magistrate or satisfy such request. Any such candidate shall be:

- (1) Of good moral character;
- (2) A resident of Arizona for one year immediately preceding recommendation; and
- (3) Admitted to the practice of law for five years immediately preceding recommendation.

In addition to other relevant materials and the results of the biennial judicial performance review, where a sitting magistrate seeks a new appointment the commission shall consider the magistrate's courtroom administrative performance as evidenced by matters including but not limited to case aging, case dispositions and the magistrates adherence to the City's Rules of Conduct and Code of Ethics. The presiding magistrate of the City Court shall perform a written annual review of each magistrate's performance measured by these criteria.

SECTION 3. The Tucson Code, Chapter VIII, Article 1, Section 8-2.1 *Methods of appointment of magistrates and qualification; establishing senior special magistrate status and compensation* is hereby amended by deleting subsection (d).

SECTION 4. The Tucson Code, Chapter VIII, Article 1, Section 8-4 *Magistrates; powers and duties*, is hereby amended by amending existing subsection (5) and adding a new subsection (6) to read as follows:

Section 8-4. Magistrate; powers and duties.

* * *

(5) Follow and adhere to supervision by the presiding judge of the superior court as provided for in Arizona Supreme Court Administrative Order 90-3, ~~and Rule 1, Uniform Rules of Practice of the Superior Court of Arizona~~ and any amendments or successors to these provisions.

(6) Follow and adhere to the City's rules of conduct and code of ethics contained in Administrative Directive 2.02-5 and 2.02-14 and any amendments or successors to these provisions.

* * *

SECTION 5. The Tucson Code Chapter VIII, Article 1, Section 8-4.1 *Authorizing assignment of an associate presiding magistrate, term, compensation*, is hereby amended to read as follows:

Sec. 8-4.1. Authorizing assignment of an a associate presiding magistrate, term, compensation, duties.

- (a) There is hereby created one administrative assignment position of Associate Presiding Magistrate of the City Court of the City of Tucson whose function it is to assist the Presiding Magistrate Judge of the City Superior Court of the City of Tucson, ~~as designated by the mayor and council~~, in performing administrative duties associated with the judicial and non-judicial functions of the City Court.
- (b) The Presiding Magistrate Judge of the City Superior Court of the City of Tucson, ~~as designed by the mayor and council~~, is hereby authorized to appoint, in ~~his or her~~ their sole discretion, any sitting city magistrate to the administrative assignment position of ~~associate~~ presiding magistrate.
- (c) Any sitting city magistrate selected for assignment to the position of ~~associate~~ presiding magistrate shall serve at the pleasure of the Presiding Magistrate Judge of the City Superior Court of the City of Tucson, ~~as designated by the mayor and council~~, and may be removed from the administrative assignment of ~~associate~~

presiding magistrate at any time, for any reason, without cause and without right of appeal by the Presiding Judge of the Superior Court.

- (d) While performing the administrative assignment of ~~associate~~ presiding magistrate, a city magistrate shall receive an additional seven thousand five hundred dollars (\$7,500.00) per annum, payable on a biweekly basis, pro-rated.
- (e) The presiding magistrate shall perform those duties as required by law and this Chapter and as assigned by the Presiding Judge of the Superior Court.

SECTION 6. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to his ordinance.

SECTION 7. If any provision of this ordinance, or the application thereof to any person or circumstance is invalid, the invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 8. The provisions of section 1 shall be implemented upon the expiration of each term of a sitting member of the Magistrate Merit Selection Commission.

SECTION 9. The application for City Magistrate is hereby amended by including Exhibit A attached hereto and incorporated herein by this reference as part of the application process for appointment as a City Magistrate.

SECTION 10. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of
Tucson, Arizona, _____.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

REVIEWED BY:

CITY ATTORNEY

CITY MANAGER

FWK:hm
2/5/04 3:55 PM